

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CARLOS HOWARD,	:	
	:	
Plaintiff,	:	12 Civ. 1176 (PAC) (HBP)
	:	
-against-	:	REPORT AND
	:	<u>RECOMMENDATION</u>
CORRECTIONAL OFFICER YOUNG	:	
#12344, <u>et al.</u> ,	:	
	:	
Defendants.	:	
	:	
-----X		

PITMAN, United States Magistrate Judge:

TO THE HONORABLE PAUL A. CROTTY, United States  
District Judge,

The pro se plaintiff commenced this action on February 14, 2012 by filing a summons and complaint. On April 26, 2012, I mailed a copy of an endorsed Order to plaintiff; it was subsequently returned to my chambers marked "Discharged" on the envelope.

On May 7, 2012, plaintiff filed a change of address form with the Clerk's Office, noting his new address in the Bronx, New York. However, on September 12, 2012, counsel for defendant The City of New York, contacted my staff advising me that Mr. Howard was re-incarcerated and was then being housed at the Otis Bantum Correctional Center in East Elmhurst, New York.

On September 14, 2012, I issued an order proposing a pretrial schedule and directing the parties to respond to the proposal by October 15, 2012. On October 15, 2012, counsel for defendants The City of New York and counsel for the individual Corrections Officers named in this action, contacted my chambers advising me that plaintiff had been released from custody; he did not provide defendants or the Court a forwarding address. Defendants also requested to be heard on their joint oral application for a motion to dismiss.

A status conference was held on November 13, 2012; plaintiff failed to appear. After the conference, I issued an order to show cause directing plaintiff to give good cause why this action should not be dismissed as a result of his failure to provide the court with his current contact information. Specifically, my November 14, 2012 Order provided:

Accordingly, it is hereby **ORDERED** that plaintiff show cause in writing no later than December 14, 2012 why this action should not be dismissed as a result of plaintiff's failure to provide the Court with current contact information. **IF PLAINTIFF FAILS TO RESPOND TO THIS ORDER IN WRITING BY DECEMBER 14, 2012, IT IS MY INTENTION TO ISSUE A REPORT AND RECOMMENDATION RECOMMENDING THAT THE ACTION BE DISMISSED WITHOUT PREJUDICE ON THE GROUND THAT PLAINTIFF, BY FAILING TO PROVIDE THE COURT WITH CONTACT INFORMATION, HAS EFFECTIVELY ABANDONED THE CASE.**

(Emphasis in original.)

A copy of my November 14 Order was mailed to plaintiff at both his Bronx, New York address and a Brooklyn, New York address that he provided to the prison authorities at the time of his release. Both copies of the order to show cause have been returned as undeliverable.

To date, plaintiff has not contacted my chambers or the Court in any way to provide current contact information. Accordingly, I respectfully recommend sua sponte that this action be dismissed without prejudice on the ground that plaintiff has abandoned the action.

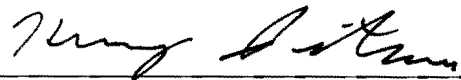
#### OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from the date of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6(a) and 6(e). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Paul A. Crotty, United States District Judge, Room 735, 500 Pearl Street, New York, New York 10007 and to the chambers of the undersigned, Room 750, 500 Pearl Street, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Crotty.

FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS WILL RESULT IN A  
WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. Thomas  
v. Arn, 474 U.S. 140 (1985); United States v. Male Juvenile, 121  
F.3d 34, 38 (2d Cir. 1997); I.U.E. AFL-CIO Pension Fund v.  
Hermann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968  
F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d  
55, 58 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 &  
n.2 (2d Cir. 1983).

Dated: New York, New York  
January 25, 2013

Respectfully submitted,



HENRY PITMAN  
United States Magistrate Judge

Copy transmitted to:

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